

**APPLICATION FOR PERMISSION**  
**UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE**

**APPLICATION NO. A/YL-PN/58**

- Applicant** : Mr. TANG Wai-cheung
- Site** : Lot 74 (Part) in D.D.133, Nim Wan Road, Ha Pak Nai, Lau Fau Shan, Yuen Long, New Territories
- Site Area** : 1,044 m<sup>2</sup> (about)
- Lease** : Block Government Lease (demised for agricultural use)
- Plan** : Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9
- Zoning** : “Agriculture” (“AGR”)
- Application** : Temporary Crops and Vegetables Collection Station for a Period of 3 Years and Filling of Land

**1. The Proposal**

- 1.1 The applicant seeks planning permission to use the application site (the Site) for temporary crops and vegetables collection station for a period of 3 years and filling of land. The Site falls within an area zoned “Agriculture” (“AGR”) on the Approved Sheung Pak Nai and Ha Pak Nai Outline Zoning Plan (OZP) No. S/YL-PN/9 (**Plan A-1**). According to the covering Notes of the OZP, temporary use or development of any land or buildings not exceeding a period of 3 years within the zones requires planning permission from the Town Planning Board (the Board) notwithstanding that the use or development is not provided for under the Notes of the OZP. Any filling of land including that to effect a change of use to any of those specified in Columns 1 and 2 or uses/developments always permitted under the covering Notes, requires planning permission from the Board.
- 1.2 There is no previous application at the Site. The Site is currently vacant and paved with gravel (**Plans A-2 and A-4a to 4b**).
- 1.3 The Site is accessible via a local track from Nim Wan Road and the ingress/egress is located at the north-western boundary of the Site (**Drawing A-1**). The applicant proposes to hard pave an area of 600 m<sup>2</sup> (57% of the Site) with asphalt. As shown on the proposed layout plan at **Drawing A-2**, no structure is proposed on site while 3 private car parking spaces and 3 loading and unloading spaces for light goods

vehicles are provided for crops and vegetable collection use. It is expected that there will be 6 trips for light goods vehicles and 10 trips for private vehicles daily. According to the applicant, the operation hours are from 5:00 a.m. to 10:00 p.m. Plans showing site access and layout submitted by the applicant are at **Drawings A-1 and A-2**.

- 1.4 In support of the application, the applicant has submitted the following documents:
- (a) Application Form received on 14.8.2019 with site access plan (**Appendix I**) and layout plan
  - (b) Further Information received on 6.9.2019 in response to (**Appendix Ia**) departmental comments
  - (c) Further Information received on 25.9.2019 clarifying the need (**Appendix Ib**) for the crops and vegetable collection station

## **2. Justifications from the Applicant**

The justifications put forth by the applicant in support of the application are detailed in para. 9 of the application form (**Appendix I**). They can be summarized as follows:

- (a) the villagers collect crops and vegetables for temporary storage at the Site in order to transport the collected crops and vegetables to market by vehicles;
- (b) it is proposed to pave part of the Site to prevent the collected crops and vegetable from getting dirty with mud during rainy days;
- (c) the original crops and vegetables collection station is too small and often blocked by on street car parking ;
- (d) the villagers produce organic and fresh crops and vegetable for the local market in small scale. The crops and vegetable collection station is essential for collecting the local produce to be sold in the local market; and
- (e) the operating time for the crops and vegetable collection station is from 5 am to 10 pm daily.

## **3. Compliance with the “Owner’s Consent/Notification” Requirements**

The applicant is not the “current land owner” and has also complied with the requirements as set out in the Town Planning Board Guidelines on Satisfying the “Owner’s Consent/Notification” Requirements under Sections 12A and 16 of the Town Planning Ordinance (TPB PG-No. 31A) by obtaining the consents of 2 current land owners. Detailed information would be deposited at the meeting for Members’ inspection.

## **4. Background**

The Site is a subject of planning enforcement action on unauthorized development involving filling of land. Enforcement Notice was issued on 27.5.2019 requiring the

discontinuation of the filling of land. Reinstatement Notice was issued on 27.6.2019 requiring reinstatement of the concerned land.

**5. Previous Application**

There is no previous application at the Site.

**6. Similar Application**

There is no similar application for crops and vegetable collection station or filling of land within the “AGR” zone on the Sheung Pak Nai and Ha Pak Nai OZP.

**7. The Site and Its Surrounding Areas (Plan A-2 to Plans A-4a and 4b)**

7.1 The Site is:

- (a) currently vacant and paved with gravel without valid planning permission; and
- (b) accessible via a local track from Nim Wan Road.

7.2 The surrounding areas have the following characteristics:

- (a) the surroundings are predominated by cultivated or fallow agricultural land, ponds and vegetated areas (**Plan A-3**);
- (b) to its further north are a storage yard for open storage of recycling materials and some residential structures. To its further northwest are some ponds and the coastal area of Deep Bay;
- (c) to its further east are some temporary structures for storage;
- (d) to its south-west are some residential structures and village office. An existing vegetable collection facility is located about 55m to its southwest (**Plan A-2**).

**8. Planning Intention**

The planning intention of the “ARG” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

**9. Comments from Relevant Government Departments**

9.1 The following Government departments have been consulted and their views on the application and public comments are summarized as follows:

**Land Administration**

9.1.1 Comments of the District Lands Officer/Yuen Long (DLO/YL):

- (a) The Site comprises Old Schedule Agricultural Lot held under the

Block Government Lease which contains the restriction that no structures are allowed to be erected without the prior approval of the Government.

- (b) The Site is accessible from Nim Wan Road through GL only. His office does not guarantee any right-of-way over the GL to the Site.
- (c) The Site falls within “Ha Pak Nai Site of Archaeological Interest” (AM98-0913).
- (d) The Site does not fall within Shek Kong Airfield Height Restriction Area.
- (e) Should planning approval be given to the planning application, the lot owner(s) of the lot(s) without Short Term Waiver (STW) will need to apply to his office for permitting the structures to be erected or regularize any irregularities on site, if any. Besides, given the proposed use is temporary in nature, only application for regularization or erection of temporary structure(s) will be considered. No construction of New Territories Exempted Building(s) will be considered or allowed. Application(s) for any of the above will be considered by the LandsD acting in the capacity of the landlord or lessor at its sole discretion and there is no guarantee that such application(s) will be approved. If such application(s) is approved, it will be subject to such terms and conditions, including among others the payment of premium or fee, as may be imposed by the LandsD.

### **Traffic**

#### 9.1.2 Comments of the Commissioner for Transport (C for T):

- (a) He has no adverse comment on the application from traffic engineering point of view.
- (b) Sufficient manoeuvring space shall be provided with the Site. No vehicles are allowed to queue back to public roads or reverse onto/from public roads.
- (c) The local track leading to the Site is not under Transport Department’s (TD) purview. The applicant shall obtain consent of the owners/managing departments of the local track for using it as the vehicular access to the Site.

#### 9.1.3 Comments of the Chief Highway Engineer/New Territories West, Highways Department (CHE/NTW, HyD):

- (a) The access arrangement should be commented by TD.
- (b) HyD shall not be responsible for the maintenance of any access connecting the Site and Nim Wan Road.

### **Nature Conservation**

9.1.4 Comments of the Director of Agriculture, Fisheries and Conservation (DAFC):

- (a) The Site falls within the “AGR” zone and possesses potential for agricultural rehabilitation. It is noted that the Site is currently a paved vacant land and is located near the vegetables collection centre operated by the Ha Tsuen Vegetable Marketing Co-operative Society Limited (**Plan A-2**). Given that there is already an existing vegetables collection centre nearby, the applicant should provide more details on the agricultural activities (e.g. transaction volume of vegetables, market channel for the vegetables) to be carried out at the Site to justify why an additional vegetables collection centre under the current application is required.
- (b) Furthermore, as regards the proposed paved area, the applicant should minimize the proposed paved area as far as possible, justify the need for the proposed paved area and filling of land of about 600m<sup>2</sup>, reinstate the land after the approval period, and suggest a reinstatement proposal for the Board’s consideration.

**Environment**

9.1.5 Comment of the Director of Environmental Protection (DEP):

- (a) There is one waste pollution complaint pertaining to the Site in the past three years.
- (b) Should the planning application be approved, the applicant is advised to follow the relevant mitigation measures and requirements in the latest "Code of Practice (COP) on Handling the Environmental Aspects of Temporary Uses and Open Storage Sites”.

**Landscape**

9.1.6 Comments of the Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD):

- (a) The Site falls within an area zoned “AGR” near the Ha Tsuen Ha Pak Nai Village Office. The Site is not subject to any previous planning application. The current application seeks planning permission for temporary crops and vegetable collection station for a period of 3 years and filling of land.
- (b) With reference to the site photos dated 23.8.2019 and aerial photo of 2018, the Site is formed with crushed gravel. No existing tree is observed within the Site. The Site is situated in an area of rural coastal landscape character predominated by farmlands, ponds and vegetated areas. The extensive hard paving of the Site is not entirely in line with the surrounding landscape character.
- (c) When comparing the aerial photos of 2011, 2013 and 2018, the Site was originally covered with dense woodland. However, since 2013 onwards, all the trees were removed and the Site was formed with gravel paving and used as a vehicle park. Landscape impact had taken

place.

- (d) Approval of the application would set an undesirable precedent which would encourage other similar development to clear and form the Site prior to obtaining planning permission. The cumulative impact of which would result in a general degradation of the rural landscape character of the area.
- (e) In view of the above, he has reservations on the application from landscape planning perspective.
- (f) As the Site is not facing any prominent public frontage and there are existing trees surrounding the Site, it is considered not necessary to impose a landscape condition should the application be approved by the Board.

### **Drainage**

9.1.7 Comments of the Chief Engineer/Mainland North, DSD (CE/MN, DSD):

- (a) He has no objection in principle to the proposed application from a drainage point of view; and
- (b) Should the Board consider that the application is acceptable from planning point of view, he would suggest a condition should be stipulated in the approval letter requiring the applicant to submit a drainage proposal including the mitigation measures for the proposed land filling works, to implement and maintain the proposed drainage facilities to the satisfaction of the Director of Drainage Services or of the Board.

### **Building Matters**

9.1.8 Comments of the Chief Building Surveyor/New Territories West, Buildings Department (CBS/NTW, BD):

- (a) Noting that there is no proposed building works on the Site, he has no comment on the proposed filling of land if it is not associated with any building construction.
- (b) Adequate precautionary measures and suitable working procedures should be adopted in carrying out the above works to safeguard the stability of any building, structure, land, street or service. Any precautionary measures, which involve new building works, are subject to paragraph (d) below.
- (c) When any natural, formed or man-made land has due to any cause been rendered so dangerous or liable to become so dangerous that it will collapse, or be likely to collapse, and thereby will cause, or will be likely to cause, a risk of injury to any person or damage to any property, enforcement action may be taken by the BD.

- (d) Before any new building works (including containers/open sheds as temporary buildings, demolition, site formation works such as excavations on sloping land, filling) are to be carried out on the Site, prior approval and consent of the BD should be obtained, otherwise they are UBW. An Authorized Person (AP) should be appointed as the co-ordinator for the proposed building works in accordance with the BO.

### **Fire Safety**

#### 9.1.9 Comments of the Director of Fire Services (D of FS):

He has no objection to the application subject to no structure being erected / to be erected on the Site.

### **Others**

#### 9.1.10 Comments of the Director of Food and Environmental Hygiene (DFEH):

- (a) No Food and Environmental Hygiene Department's (FEHD) facilities will be affected and such work and operation shall not cause any environmental nuisance, pest infestation and obstruction to the surrounding.
- (b) For any waste generated from the such business, the applicant should arrange disposal properly at her own expenses; and
- (c) Proper licence / permit issued by FEHD is required if there is any catering service / activities regulated by the Director of Food and Environmental Hygiene under the Public Health and Municipal Services Ordinance (Cap. 132) and other relevant legislation for the public.

#### 9.1.11 Comments of the Antiquities and Monuments Office (AMO);

The Site falls within the Ha Pak Nai Site of Archaeological Interest. Nothing the the applicant has clarified that the proposed development does not involve any site formation or ground excavation works, the AMO has no objection to the subject application given that no site formation or ground excavation works would be carried out during the proposed development.

### **District Officer's Comments**

#### 9.1.12 Comments of the District Officer (Yuen Long), Home Affairs Department (DO/YL, HAD):

His office has not received any comment from the locals on the application.

#### 9.2 The following Government departments have no comment on the application:

- (a) Project Manager/New Territories West, Civil Engineering and Development Department (PM/NTW, CEDD);

- (b) Chief Engineer/Land Works, Civil Engineering and Development Department (CE/LW, CEDD);
- (c) Head of Geotechnical Engineering Office, Civil Engineering and Development Department (H(GEO), CEDD);
- (d) Director of Electrical and Mechanical Services (DEMS);
- (e) Director of Leisure, Cultural and Services (DLCS);
- (f) Commissioner of Police (C of P); and
- (g) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD).

## **10. Public Comments Received During Statutory Publication Period**

On 23.8.2019, the application was published for public inspection. During the first three weeks of the statutory public inspection period which ended on 13.9.2019, eight public comments were received from Kadoorie Farm & Botanic Garden Corporation (KFBG), the Hong Kong Bird Watching Society (HKBWS), Designing Hong Kong (DHK) and 5 individuals objecting to the application (**Appendices II-1 to II-8**). The main objecting reasons are summarized below:

- (a) the applied use is not in line with the planning intention of the “AGR” zone;
- (b) the Site is the subject of enforcement action for unauthorized filling of land and Reinstatement Notice has been issued to remove the leftovers, debris and fill materials (including asphalt) on the land and to grass the land;
- (c) the Site is located within “AGR” zone. Filling/paving any part of the land with asphalt is not appropriate as this would greatly affect the soil conditions and would also seriously contaminate the land;
- (d) the Board should not encourage “destroy first, build later”; and
- (e) approval of the application would set an undesirable precedent for similar applications and cumulative effect of which would result in general degradation of the environment of the area.

## **11. Planning Considerations and Assessments**

11.1 The subject application is for temporary crops and vegetable collection station for a period of 3 years and filling of land at the Site zoned “AGR” on the OZP. The planning intention of the “AGR” zone is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. The applicant proposes to hard pave the Site with asphalt for an area of 600m<sup>2</sup> (57% of the Site). In this regard, DAFC stated that the Site has high potential for agricultural rehabilitation and should justify the need for the proposed paved area. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis.

11.2 The Site is situated in an area of rural landscape character predominated by active or fallow agricultural land, ponds and vegetation (**Plan A-3**). The extensive hard paving for the proposed use is not entirely compatible with the surrounding landscape character. In this regard, CTP/UD&L has reservation on the application from the landscape planning perspective.



- 11.3 According to DAFC, there is an existing vegetable collection station operated by the Ha Tsuen Vegetable Marketing Co-operative Society Limited located 55m southwest of the Site (**Plan A-2**). Given that there is an existing vegetable collection station in the vicinity, the applicant fails to justify why an additional vegetable collection station is required.
- 11.4 There is no adverse comment from other concerned Government departments, including DEP, C for T, DSD and D of FS. Significant adverse environmental, drainage and traffic impacts on the surrounding area are not expected.
- 11.5 There is no similar application within the “AGR” zone on the Sheung Pak Nai and Ha Pak Nai OZP for temporary uses or filling of land. In this regard, approval of the application, which involves filling of land, would set an undesirable precedent for similar applications within the “AGR” zone. The cumulative effect of approving such similar applications would result in a general degradation of the rural environment and landscape quality of the area.
- 11.6 Eight public comments were received objecting to the application mainly on grounds stated in paragraph 10. The planning considerations and assessments in paragraphs 11.1 to 11.5 are relevant.

## **12. Planning Department’s Views**

- 12.1 Based on the assessment made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department does not support the application for temporary crops and vegetable collection station and filling of land for the following reasons.
- (a) the applied development is not in line with the planning intention of the “AGR” zone. The planning intention of the “ARG” zone is to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes, and also to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from such planning intention, even on a temporary basis;
  - (b) the applicant fails to demonstrate that the proposed development would not generate adverse landscape impact on the surrounding areas; and
  - (c) approval of the application, even on a temporary basis, would set an undesirable precedent for similar applications for other developments within the “AGR” zone, the cumulative effect of which will result in a general degradation of the rural environment.
- 12.2 Alternatively, should the Committee decide to approve the application, it is suggested that the permission shall be valid on a temporary basis for a period of 3 years until **4.10.2022**. The following conditions of approval and advisory clauses are also suggested for Members’ reference:

### Approval Conditions

- (a) no operation from 10:00 p.m. to 5:00 a.m., as proposed by the applicant, is allowed on the Site during the planning approval period;
- (b) no vehicle is allowed to queue back to public roads or reverse onto/from public roads at any time during the planning approval period;
- (c) the submission of the drainage proposal including the mitigation measures for the proposed land filling works within **6** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **4.4.2020**;
- (d) in relation to (c) above, the implementation of the drainage proposal within **9** months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by **4.7.2020**;
- (e) in relation to (d) above, the implemented drainage facilities shall be maintained at all times during the planning approval period;
- (f) the submission of a reinstatement proposal within **6** months from the date of planning approval to the satisfaction of Director of Agriculture, Fisheries and Conservation or of the Town Planning Board by **4.4.2020**;
- (g) if any of the above planning conditions (a), (b) or (e) is not complied with during the approval period, the approval hereby given shall cease to have effect and shall be revoked immediately without further notice;
- (h) if any of the above planning conditions (c), (d) or (f) is not complied with by the above specified date, the approval hereby given shall cease to have effect and shall on the same date be revoked without further notice; and
- (i) in relation to (f) above, upon expiry of the planning permission, the reinstatement of the Site according to the approved reinstatement proposal to the satisfaction of the Director of Agriculture, Fisheries and Conservation or of the Town Planning Board.

#### Advisory Clauses

The recommended advisory clauses are attached at **Appendix III**.

### **13. Decision Sought**

- 13.1 The Committee is invited to consider the application and decide whether to grant or refuse to grant permission.
- 13.2 Should the Committee decide to reject the application, Members are invited to advise what reasons for rejection should be given to the applicant.
- 13.3 Alternatively, should the Committee decide to approve the application, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the period of which the permission should be valid on a temporary basis.

**14. Attachments**

<b>Appendix I</b>	Application Form received on 14.8.2019 with site access plan and layout plan
<b>Appendix Ia</b>	Further Information received on 6.9.2019 in response to departmental comments
<b>Appendix Ib</b>	Further Information received on 25.9.2019 clarifying the need for the crops and vegetable collection station
<b>Appendices II-1 to II-8</b>	Public Comments
<b>Appendix III</b>	Advisory Clauses
<b>Drawing A-1</b>	Proposed Site Access Plan
<b>Drawing A-2</b>	Proposed Layout Plan
<b>Plan A-1</b>	Location Plan
<b>Plan A-2</b>	Site Plan
<b>Plan A-3a to 3b</b>	Aerial Photos
<b>Plans A-4a to 4b</b>	Site Photos

**PLANNING DEPARTMENT  
OCTOBER 2019**